

1 Q. It's a "yes" or "no" question,  
2 Mr. Freshwater.

3 A. Repeat the -- okay, repeat the question,  
4 sir.

5 Q. Did you ever indicate that dinosaurs and  
6 man walked the earth at the same time to students?

7 A. No, sir, I just . . .

8 Q. Let me show you page 463 from your  
9 testimony of your hearing transcript, at line 12  
10 there's a question: "Did you ever indicate that  
11 dinosaurs and man walked the earth at the same time  
12 to students?" Do you see that?

13 A. Scientific evidence --

14 Q. But is that --

15 A. -- no. Is that what you're saying there  
16 is correct?

17 Q. My only question is --

18 A. I'm sorry. Repeat it, sir.

19 Q. At your testimony the question was asked  
20 of you "Did you ever indicate that dinosaurs and man  
21 walked the earth at the same time to students?" And  
22 you answered "Yes." Did I read that correctly?

23 A. We just --

24 Q. It's a simple question. Did I read it

1 correctly?

2 A. Yes, you did. I'm sorry, sir. Yes.

3 Q. So at the hearing you testified that you  
4 had told your students that dinosaurs and man walked  
5 the earth at the same time.

6 A. Yes.

7 Q. Okay.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Mr. Freshwater, let me hand you what we  
10 marked as Exhibit 10. This is the handout you were  
11 talking about before that you used in your class?

12 A. Yes, that is correct.

13 Q. Okay. Where did you get this handout?

14 A. From a student.

15 Q. And then you would have used this, then,  
16 in your eighth grade classes for a number of years,  
17 correct?

18 A. Yes.

19 Q. And did you use this in James Doe's  
20 class; do you recall?

21 A. No, sir.

22 Q. You don't recall?

23 A. No, sir.

24 Q. Okay. If you look at the second part of

1 this exhibit, it's filled in; do you see that? Same  
2 thing but filled in.

3 A. Yes.

4 Q. Is that your handwriting?

5 A. No, sir.

6 Q. Do you know whose handwriting that is?

7 A. No, sir.

8 Q. If you look at the second page of the  
9 handwritten one, it says "Question" and then question  
10 mark, question mark. Do you see that?

11 A. Yes.

12 Q. And then underneath that it says  
13 "Impersonal plus time plus chance equals woodpecker."  
14 Do you see that?

15 A. Yes, I do.

16 Q. Okay. Do you know what that means?

17 A. I don't know -- I wasn't the one who  
18 wrote this down, so . . .

19 Q. Okay. This one that's filled out, is  
20 this the answer key that you used?

21 A. No.

22 Q. Do you know where this one that's filled  
23 out came from?

24 A. No, I don't, sir.

1 Q. And you don't know what impersonal plus  
2 time plus chance means?

3 A. I don't know what the girl was or boy was  
4 doing when he put it down. I don't know, sir.

5 Q. Okay. Underneath that it says "Is there  
6 an ID involved?" Do you see that?

7 A. Yes, sir.

8 Q. And you understand that "ID" there refers  
9 to intelligent design.

10 A. I guess it can refer to that, yes. It  
11 can refer to that.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 Q. Mr. Freshwater, I'm handing you what's  
14 been marked as Exhibit 11. This would be the giraffe  
15 worksheet that you talked about before; is that  
16 right?

17 A. That would be correct.

18 Q. Okay. And this is, likewise, something  
19 that you used in your science class over the years.

20 A. That would be correct.

21 Q. Okay. And is this handwriting we see on  
22 the one version yours?

23 A. No, it's not.

24 Q. Okay. And on the second page it's got

1 down there towards the bottom, it says "Impersonal  
2 plus time plus chance," that's actually typewritten  
3 in, again, you don't know what that means?

4 A. I didn't -- I didn't create this document  
5 either, sir.

6 Q. That's not my question. My question is  
7 do you know what that means, impersonal plus times  
8 plus chance?

9 A. I don't know what the girl that created  
10 this, what she meant by that.

11 Q. Okay.

12 A. Or guy. I do believe it was a girl.

13 Q. Okay. And underneath there, again, it  
14 says "Is there an ID involved?" Do you see that?

15 A. Yes.

16 Q. "ID" there would likewise refer to  
17 intelligent design, right?

18 A. I would assume that, yes.

19 (EXHIBIT MARKED FOR IDENTIFICATION.)

20 Q. Mr. Freshwater, I'm handing you what's  
21 been marked as Exhibit 12. I take it this is a quiz  
22 you would have given to students based on those  
23 worksheets about the giraffe and the woodpecker.

24 A. Yes.

1 Q. Okay. And you gave this exam, this quiz,  
2 to your kids over the years.

3 A. Yes.

4 Q. Do you recall whether you gave it to the  
5 kids in James Doe's class?

6 A. I did not, sir.

7 Q. You did not give it to --

8 A. Yes, I did not give it to them.

9 Q. Okay. How about the giraffe handout, did  
10 you give that to the kids in James Doe's class?

11 A. No, I did not.

12 Q. And the woodpecker -- never mind.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Freshwater, let me hand you what's  
15 been marked as Exhibit 13. This is a quiz about the  
16 angler fish that you would have used with your kids  
17 in the science class; is that right?

18 A. Yes.

19 Q. Is that your handwriting on there?

20 A. I'm not sure on that one.

21 Q. Does this look like your handwriting?

22 A. That may be.

23 Q. You're not certain whether it's your  
24 handwriting or not?

1           A.    I'm not certain, sir.

2           Q.    Okay.  These quizzes that we just talked  
3   about for the giraffe, the woodpecker, and angler  
4   fish, these handouts, what's the purpose of those  
5   handouts?

6           A.    Going back to that concrete-abstract  
7   thinking.  It ties in with a standard.

8           Q.    So it's a critical analysis exercise?

9           A.    I'm trying to see if I can quote the  
10   standard, sir.  I'm going to try to.  I might mess up  
11   on the standard here, but explain why it's important  
12   to examine data objectively and don't let bias affect  
13   your observation; I think that's what the standard  
14   states.

15          Q.    As an exercise, though, this is one of  
16   those critical analysis type exercises you were  
17   talking about earlier?

18          A.    Yes.

19                   (EXHIBIT MARKED FOR IDENTIFICATION.)

20          Q.    Mr. Freshwater, let me hand you what  
21   we've marked as Exhibit 14.  This is a handout on  
22   dragon history that you would have used in your  
23   science class over the years.

24          A.    Yes.

1           Q.    Do you know where you obtained this  
2 particular handout?

3           A.    No, sir.

4           Q.    It looks like it's been printed from  
5 something or some source. You don't recall the  
6 source of what that was?

7           A.    No, I don't, sir.

8           Q.    Do you recall where you obtained this  
9 from?

10          A.    No, I don't, sir.

11          Q.    Okay. Do you recall using this Dragon  
12 History handout in James Doe's class?

13          A.    I don't think I used it in his class.

14          Q.    You're not certain?

15          A.    I'm not certain.

16          Q.    Okay.

17                   (EXHIBIT MARKED FOR IDENTIFICATION.)

18          Q.    Mr. Freshwater, let me hand you what  
19 we've marked as Exhibit 15. We're going to go  
20 through these as quickly as possible so we can get  
21 done here today. Again, this is another one of the  
22 handouts that you used in your eighth grade science  
23 class, correct?

24          A.    That would be correct, sir.



1           Q.    Okay.  And do you recall whether you used  
2   this one in James Doe's class year?

3           A.    I do not think I used this one, sir.

4           Q.    Okay.  How about -- there again, you're  
5   not certain whether you did or you didn't.

6           A.    I can say no to that one.  I think I can  
7   say no to that one.

8           Q.    That you did not use it in James Doe's  
9   class.

10          A.    Yes.

11          Q.    Okay.  If you look at the final paragraph  
12   on Exhibit 15, that paragraph references radiometric  
13   dating.  Do you see that?

14          A.    What paragraph says that?

15          Q.    The very last paragraph.

16          A.    The last one.

17          Q.    You have to turn the page there.  It's  
18   the very last paragraph of the handout.

19          A.    Okay.

20          Q.    That paragraph references radiometric  
21   dating, correct?

22          A.    Yes, it does.

23          Q.    And if you read that paragraph, that  
24   paragraph appears to question the validity of

1 radiometric dating, right?

2 A. Can I read it?

3 Q. Sure.

4 A. Go ahead, sir.

5 Q. This paragraph appears to question the  
6 validity of radiometric dating, correct?

7 A. Yes.

8 Q. Okay. And, in fact, it suggests that  
9 dinosaurs may not be as old as scientists thought,  
10 right?

11 A. Yes.

12 Q. And it actually says in there that it may  
13 be that man hunted dinosaurs to extinction. Do you  
14 see that?

15 A. Yes.

16 (EXHIBIT MARKED FOR IDENTIFICATION.)

17 Q. Mr. Freshwater, I'm handing you what's  
18 been marked as Exhibit 16, and this is two versions  
19 of the same thing, but these are, again, handouts  
20 that you would have used with the students in your  
21 eighth grade class over the years. You've had a  
22 chance to look another those?

23 A. Yes, I have.

24 Q. Again, these are handouts you would have

1 used with your eighth grade science students over the  
2 years.

3 A. No, sir.

4 Q. These ones you say you did not use with  
5 your students?

6 A. I wouldn't have used the second one.

7 Q. Okay. The first one has some information  
8 redacted from it, so -- and the second one has that  
9 information that remains in it. So what you're  
10 telling me is you would have used the first one with  
11 the redacted information but would not have given the  
12 students the second one; is that right?

13 A. That would be correct, sir.

14 Q. Do you recall whether you used this  
15 Dinosaur Extinction handout, the one here on the top  
16 with the redacted information, in James Doe's school  
17 year?

18 A. No. No, sir.

19 Q. Do you know whether you did or you just  
20 don't recall?

21 A. I'll stick with no on that.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. Mr. Freshwater, I'm going to hand you  
24 Exhibit 17. Again, is this one of the handouts you

1 would have used with your eighth grade science  
2 students over the years?

3 A. No, sir.

4 Q. Would you have used a version of this  
5 Exhibit 17?

6 A. I've never seen this one before, but I  
7 can read through it.

8 Q. You've never seen this one before?

9 A. Let me read down through it real quick.  
10 I've never seen this or any portion of  
11 this.

12 Q. Okay. With all these handouts that we've  
13 just been discussing, did you ever obtain approval  
14 from administrators within your school or the school  
15 district for permission to use those handouts?

16 A. Approval from them?

17 Q. Yeah. Approval from anyone within the  
18 school or school district to use those handouts in  
19 your science class.

20 A. You just used the word "any" in there.

21 Q. Any of these handouts we've been talking  
22 about, the ones that you, I said the ones that you  
23 testified that you did use in class, any of those  
24 ones, did you first seek permission from anyone

1 within the school district to use them in your class?

2 A. I would think through an evaluation  
3 through either Jeff Kuntz or Mr. Keib, if I'm not  
4 mistaken, I think they were in my room during an  
5 evaluation using this.

6 Q. That's not my question.

7 A. I guess that would be approval. I'm just  
8 saying that would be approval because they saw the  
9 worksheet and they didn't say anything to me about  
10 it, sir.

11 Q. Okay. But before you started using them  
12 you didn't go first seek their approval; that's  
13 correct.

14 A. I see what you're saying on that.

15 Q. Is that correct?

16 A. I can say yes.

17 (EXHIBIT MARKED FOR IDENTIFICATION.)

18 Q. Mr. Freshwater, let me hand you what  
19 we've marked as Exhibit 18. Have you seen this  
20 document before?

21 A. That would be yes.

22 Q. And this was a complaint form that was  
23 lodged against you by the parent of a student, right?

24 A. Yes.

1 Q. And it was during the 2006 school year;  
2 do you see that there?

3 A. Yes, I do.

4 Q. Okay. And this parent was complaining  
5 about your use of the attached handout here, correct?

6 A. That would be correct.

7 Q. And this handout that you attached would  
8 have been given out to students in that 2006 school  
9 year, correct?

10 A. That would be correct.

11 Q. Do you recall where you got this handout  
12 that's attached to Exhibit 18?

13 A. I'm sorry, did you say where or --

14 Q. Where you got it.

15 A. Where? That's a great -- that was a  
16 question that was under discussion is the where.

17 Q. With whom?

18 A. That would be Mr. Maley, superintendent.

19 Q. But I'm just asking you, where do you  
20 recall getting this?

21 A. Again, I want to come back and say that  
22 was what was under discussion. It could not be  
23 located.

24 Q. You couldn't figure out where you got it.

1 A. No.

2 Q. I see what you're saying.

3 A. No.

4 Q. Okay.

5 A. Can I add onto that?

6 Q. Sure.

7 A. They couldn't -- the computer, Ken Wiles,  
8 I haven't said that name for a while, Ken Wiles, the  
9 computer tech, also tried to locate it for me, and he  
10 could not find it so we couldn't get a location on  
11 this --

12 Q. Okay.

13 A. -- worksheet.

14 Q. And you recalled it being from some  
15 website; is that right?

16 A. Yeah. It obviously came off of a  
17 website.

18 Q. And in that website -- that website was  
19 no longer maintained, it didn't exist or something?

20 A. That is correct.

21 Q. So Ken couldn't find it because the  
22 website was no longer up and running.

23 A. That's exactly what he said. It was no  
24 longer in existence.

1 Q. On page 2, this handwriting that's off to  
2 the right, is that your handwriting?

3 A. No, that's not, sir.

4 Q. Down here at the bottom it says "All  
5 About God Ministries." Do you see that?

6 A. Uh-huh.

7 Q. It's got an address.

8 A. Yes.

9 Q. Did you tell Ken that you had gotten this  
10 from All About God Ministries?

11 A. No, I did not.

12 Q. Do you know who wrote that on there?

13 A. I would assume it was from the person's  
14 name that's crossed off here.

15 Q. Do you remember who that person was?

16 A. That would be a Mr. Souhrada. Don't ask  
17 me to spell it, sorry.

18 Q. I think it's S-o-u-h-r-a-d-a.

19 And you had Mr. Souhrada's student in  
20 your class in 2006.

21 A. That is correct, I had his son.

22 Q. And what's his son's name?

23 A. There's two of them, I can mess up on the  
24 names so I'm not going to say. I'm not sure which --



1 I want to say Dylan, but I could be wrong.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 Q. Mr. Freshwater, let me hand you what  
4 we've marked as Exhibit 19. Exhibit 19 were  
5 materials that you had put together to respond to  
6 this complaint from Mr. Souhrada; is that right?

7 A. Yes. Can I read it real quick?

8 Q. Yeah.

9 A. I don't remember even if I've seen this  
10 one or not.

11 Q. Go right ahead.

12 A. Obviously, I did; my name.

13 Okay. That was my own. I hadn't seen  
14 that for a while. I apologize for that. I hadn't  
15 seen that for a while.

16 Q. This was a collection of materials you  
17 put together to respond to the complaint that  
18 Mr. Souhrada had made about you, correct?

19 A. Yes. This was something Mr. Maley  
20 requested and I followed through with.

21 Q. And then if you look, the first page is a  
22 letter that you sent to Mr. Maley.

23 A. Yes, that is correct.

24 Q. And that's where you explained this

1 problem in locating the source of the article, right?

2 A. That is correct.

3 Q. And then the next two pages are the  
4 academic content standards.

5 A. Yes.

6 Q. And what were you doing there attaching  
7 these academic content standards?

8 A. It was two things that Mr. Maley wanted.  
9 He wanted to know the academic content standards on  
10 why I was teaching this, and also the location, the  
11 source of the worksheet. Those are the two things.  
12 I was just complying.

13 Q. He wanted to know what the academic  
14 content standards were that related to this  
15 handout --

16 A. That is correct.

17 Q. -- that had been used. And the handout  
18 here is titled "Charles Darwin - Origin Theory." Do  
19 you see that?

20 A. Yes, sir.

21 Q. There's actually a second one called  
22 "Darwin's Theory of Evolution - The Premise and  
23 Problem." Do you see that?

24 A. Yes.

1           Q.    So there were really two handouts that  
2 accompanied this particular lesson.

3           A.    I do not remember this first one.

4           Q.    The Charles Darwin - Origin Theory one?

5           A.    Yeah. I don't recall that being into  
6 play.

7           Q.    Okay. The second one, do you recall --

8           A.    Yes.

9           Q.    -- handing that one out --

10          A.    Yes.

11          Q.    -- in class? All right.

12          A.    Yes.

13          Q.    Do you remember handing that out in James  
14 Doe's class year?

15          A.    No, I don't. It's not part of my  
16 curriculum anymore.

17          Q.    But the Charles Darwin - Origin Theory  
18 handout, you don't recall handing that one out?

19          A.    Repeat your question. I'm sorry.

20          Q.    The handout that's entitled "Charles  
21 Darwin - Origin Theory," you don't recall handing  
22 that one out in class. Or do you.

23          A.    To which class are you talking about,  
24 sir?

1 Q. Any class during the years that you were  
2 a science teacher.

3 A. Yes, I probably passed that one out.

4 Q. Okay. So we talked about the first two  
5 pages behind your letter are relating to the academic  
6 content standards, then the third page are your  
7 lesson plans for that week. Do you see that?

8 A. Yes.

9 Q. When you were suspended in 2008, what  
10 happened to your lesson plans?

11 A. I don't know what happened to it, sir.

12 Q. Do you still have your lesson plans for  
13 the 2007-2008 school year?

14 A. No. I don't have it, no, sir.

15 Q. Where would they be?

16 A. I said I don't know where they are.

17 Q. Were they something you kept at school?

18 A. Yes.

19 Q. Okay. And as far as you know you left  
20 them in school.

21 A. Yes.

22 Q. You didn't bring them home with you.

23 A. No, sir.

24 Q. What kind of document did you keep your

1 lesson plans in?

2 A. I kept mine in the booklet that's passed  
3 out at the beginning of the school year, the lesson  
4 plan booklet that's passed out at the beginning of  
5 the school year.

6 Q. It's a binder of some sort?

7 A. Yes.

8 Q. And it's got blank lesson plan sheets in  
9 there.

10 A. Yes.

11 Q. Do you write your lesson plans on a  
12 week-by-week basis?

13 A. That would be correct.

14 Q. Okay. And as you finish a week, do you  
15 keep those lesson plans in that binder? In other  
16 words, at the end of the year you would have your  
17 entire year's worth of lesson plans still contained  
18 in the binder?

19 A. We turn them into the office, but  
20 2007-2008 we did not.

21 Q. So typically at the end of '07-'08 -- you  
22 turn them in at the end of the year or on a weekly  
23 basis?

24 A. Weekly basis.

1 Q. But in 2007-2008 you did not?

2 A. First week or two.

3 Q. First week or two you did?

4 A. We were required the first couple weeks  
5 and then from there we did not; we weren't required.

6 Q. So for 2007 and 2008 your lesson plans,  
7 did you keep them for the entire year in that same  
8 notebook?

9 A. Yes.

10 Q. So at the end of the year you had all the  
11 lesson plans for the year but for the first couple of  
12 weeks still in that notebook.

13 A. Yes. What it was was copies, so they  
14 were -- I put a carbon paper underneath it, so that's  
15 what went to the office.

16 Q. Okay. What I'm just trying to --

17 A. I may not have answered your question  
18 correctly.

19 Q. What I'm trying to figure is at the end  
20 of the year, of the '07-'08 school year, you had a  
21 binder full of the year's lesson plans.

22 A. Yes.

23 Q. And that's what you don't know what  
24 happened to.

1 A. Yes.

2 Q. Okay. But you don't -- you recall that  
3 you did not take it home with you.

4 A. That is correct.

5 Q. Now, this particular lesson plan we're  
6 looking at here is for the week April 3<sup>rd</sup> to 7<sup>th</sup>,  
7 2006. Do you see that?

8 A. Yes.

9 Q. And this lesson plan, I guess at the top  
10 there it's got in quotation marks the words  
11 "Specified Complexity" and then, underneath that,  
12 "Irreducible Complexity." Do you see that?

13 A. Yes, I do, sir.

14 Q. What's meant by those terms?

15 A. I would have to refresh my memory just  
16 like -- before I do a lesson, I always, obviously,  
17 prep for it just like you've prepped.

18 Q. As you sit here today you don't remember  
19 what those terms mean?

20 A. Yes.

21 Q. Okay. Do you understand that those are  
22 intelligent design concepts?

23 A. Again, we went through that intelligent  
24 design thing. You're going to have to define

1 intelligent design.

2 Q. Do you understand them to be intelligent  
3 design concepts or not?

4 A. I do not. I'm sorry, no, I don't.

5 Q. If you go down to the middle of the page,  
6 there's a reference there, Pepper Moth --

7 A. Yes.

8 Q. -- Worksheet. Do you see that?

9 A. Yes, I do.

10 Q. And that would have been one of these  
11 worksheets similar to the ones we've looked at today  
12 that you would have handed out in class during that  
13 school year?

14 A. I didn't see anything with pepper moth  
15 come through here I don't think, sir. Again, I'd  
16 have to refresh my memory on that.

17 Q. Do you recall giving kids some kind of  
18 handout or something used to discuss the pepper moth?

19 A. It looks like I did, sir, yes.

20 Q. Right. And that's similar to these other  
21 sheets we've seen already today, that would have been  
22 something you would have used with your students over  
23 the years, that same type of handout?

24 A. Yes.



1 Q. Okay. And up above there's "Worksheet -  
2 Charles Darwin Life." Do you see that?

3 A. Yes, I do.

4 Q. Likewise, that's a worksheet that you  
5 would have handed out to your students over the  
6 years, correct?

7 A. Yes.

8 Q. Okay. That, in fact, is the one that  
9 this particular student was complaining about that  
10 you were addressing by way of this response contained  
11 in Exhibit 19.

12 A. Yes.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. Mr. Freshwater, let me hand you what  
15 we've marked as Exhibit 20. Have you ever seen this  
16 document before?

17 A. Can you give me a minute to look through  
18 this here?

19 Q. Sure.

20 A. I'm sorry, it was just this one.

21 Q. Yeah, Exhibit 20. Have you seen that  
22 before?

23 A. I'm not a hundred percent sure on that  
24 one, sir.

1 Q. Do you remember this conversation taking  
2 place, though, where someone else complained about --

3 A. Yes.

4 Q. -- a handout you had used in class?

5 A. Yes.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 Q. Mr. Freshwater, I'm handing you what's  
8 been marked as Exhibit 21. Do you recognize this  
9 document?

10 A. Yeah, I do recognize this.

11 Q. This, again, was a letter sent to you by  
12 Jeff Maley, the superintendent; is that right?

13 A. That is correct.

14 Q. And it reflects a complaint by a parent,  
15 again, about one of these handouts that you had used  
16 in class; is that correct?

17 A. I do believe it's the same parent.

18 Q. Okay. And by way of this letter the  
19 superintendent of the schools, Mr. Maley, was  
20 directing you to delete this material from the  
21 supplemental resources you used in your classroom.

22 A. That is correct.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. Okay. Mr. Freshwater, let me hand you

1     what we marked as Exhibit 22. Exhibit 22 is another  
2     one of the handouts you used over the years in your  
3     classroom.

4             A.     Let me look through it real quick, sir.

5             THE WITNESS: Can I look at yours?

6             MR. HAMILTON: Pages missing?

7             Q.     Let me see. Is there a page missing?

8             A.     Just a blank, sir.

9             Q.     You can just rip that page out if you'd  
10     like, that's just a blank page.

11            A.     Okay, sir.

12            Q.     My question is, this is another one of  
13     the handouts you used over the years in your science  
14     class?

15            A.     That would be correct.

16            Q.     And do you recall using this in James  
17     Doe's year?

18            A.     No.

19            Q.     Do you recall asking kids to go see the  
20     movie Expelled: No Intelligence Allowed, for extra  
21     credit?

22            A.     Yes.

23            Q.     And that was an assignment you'd given to  
24     the students in James Doe's class year?

1           A.     Yes.

2                     (EXHIBIT MARKED FOR IDENTIFICATION.)

3           Q.     I'll hand you what we've marked as  
4     Exhibit 23. Is that the extra credit assignment that  
5     you gave out to James Doe's class for the movie  
6     Expelled?

7           A.     That is correct, sir.

8           Q.     Are you familiar with the website called  
9     AnswersInGenesis.org?

10          A.     Am I familiar with it? Yes.

11          Q.     And you referred students in your class,  
12     including James Doe, to go look at that website to  
13     look up answers to certain things, correct?

14          A.     No, sir.

15          Q.     You deny ever referring James Doe to go  
16     look up information on that website?

17          A.     He asked me. He requested, and I gave  
18     approval.

19          Q.     So he asked you if he could go look up  
20     something in the Answers in Genesis website, or did  
21     he just ask you if he could go look up something on  
22     the website?

23          A.     I remember it being kind of an odd time.  
24     He came up towards the end of the period, he'd never

1 asked me to -- what I thought was odd was he's never  
2 come up and asked me to go back to the back room and  
3 get on a computer to look, so I granted his request  
4 to go to Answers in Genesis.

5 Q. But he specifically asked to go --

6 A. Yes.

7 Q. -- look at Answers in Genesis?

8 A. Yes.

9 Q. Okay. Did you ever go to this website  
10 during your class periods?

11 A. No.

12 Q. Did you ever discuss the hydrosphere  
13 theory with students in your eighth grade science  
14 class?

15 A. When we studied the atmosphere, yes.

16 Q. You also discussed that theory in James  
17 Doe's class, correct?

18 A. Let me -- I looked at the -- before I  
19 came I looked at the transcript on that and I will  
20 say that I -- I misspoke on that. Hydrosphere  
21 hypothesis, theory was mentioned a lot there. So  
22 just in correcting you saying hydrospheric theory, it  
23 would be hydrosphere hypothesis.

24 Q. So you discussed the hydrosphere

1 hypothesis in James Doe's class.

2 A. That would be correct, sir.

3 Q. And you also taught your students that  
4 the big bang theory likely did not occur?

5 A. We talked about the big bang in there,  
6 it's science.

7 Q. Okay. You examined the big bang theory?

8 A. Yes.

9 Q. And at one point you told your students  
10 that the big bang likely did not occur, right?

11 A. I don't recall saying that, sir.

12 Q. You don't recall that.

13 A. No.

14 Q. Do you keep the book called Icons of  
15 Evolution in your classroom?

16 A. Yeah, I think it was in my classroom at  
17 the time.

18 Q. And you also kept the book Refuting  
19 Evolution in your classroom.

20 A. I do believe that was in my classroom.

21 Q. Both of those books were in your  
22 classroom during the 2007-2008 school year, correct?

23 A. That would be correct.

24 Q. Okay. You also had a videotape in your

1 classroom during the 2007-2008 school year called  
2 Lies in the Textbooks Part A: Ten Lies of Evolution,  
3 correct?

4 A. I'm not sure of that one, sir, at that  
5 time. I'm not sure.

6 Q. Do you recall having that videotape in  
7 your classroom?

8 A. I don't recall, sir.

9 Q. Do you recall a Loch Ness monster video?

10 A. I don't recall.

11 Q. Over the years you've received complaints  
12 from parents of children about different things  
13 you've taught them in the class, correct, some of  
14 these things we just talked about?

15 A. Over the years received complaints?

16 Q. Yeah, we talked about Mr. Souhrada's  
17 complaint and some of these other complaints. Over  
18 the years there were complaints made against you for  
19 what you taught to kids.

20 A. One. Yeah, you just mentioned one. Are  
21 you assuming there's others?

22 Q. Well, you tell me. Was there more than  
23 one?

24 A. I don't recall any others.

1 Q. The only one you recall is Mr. Souhrada.

2 A. Yes, that's the only one I recall.

3 Q. There were other complaints lodged by  
4 teachers against you over the years, correct, about  
5 your teaching?

6 A. Yeah. I would say yes to that.

7 Q. And they were specifically complaining  
8 about how you taught evolution to your students,  
9 correct?

10 A. Yes.

11 Q. One of those students was Bonnie, is it  
12 Schutte, or Schutte?

13 A. Schutte.

14 Q. Schutte; is that right?

15 A. That is correct.

16 MR. HAMILTON: Did you call her a student  
17 or a teacher?

18 Q. I'm sorry. One of the teachers. She's  
19 one of the teachers that complained about how you  
20 taught evolution; is that correct?

21 A. Yes.

22 Q. And there was a teacher named Elle Button  
23 that also complained about how you taught evolution  
24 to kids.



1           A.    I don't know if it was complaints but  
2           just trying to -- discussion. I don't know if I  
3           would put the word "complaint" with it.

4           Q.    She raised an issue about some aspect --

5           A.    She is a colleague so we talked science,  
6           obviously.

7           Q.    Okay. And she raised an issue about the  
8           way you were teaching evolution to her daughter,  
9           Student No. 71 --

10          A.    Yes.

11          Q.    -- who was in your class, right?

12          A.    Yes, she did.

13          Q.    Did you ever quote the Bible in class?

14          A.    No.

15          Q.    You never read from the Bible, during  
16          class I mean.

17          A.    Okay. The way you stated it -- no.

18          Q.    Did you ever put your hand on the Bible  
19          in class when you were trying to make a point about  
20          something?

21          A.    No.

22          Q.    Now, you were involved with FCA you told  
23          us, right?

24          A.    Was I -- repeat it.

1 (Record read.)

2 A. Yes.

3 Q. And FCA a Fellowship of Christian  
4 Athletes?

5 A. Yes.

6 Q. And we talked a little bit before that at  
7 one point in time it would have been called Cross  
8 Club?

9 A. Yes.

10 Q. Do you recall they changed the name from  
11 Cross Club to FCA maybe like 15 years ago or so?  
12 Does that ring a bell?

13 A. I would say probably a little less than  
14 that.

15 Q. Ten years ago?

16 A. Yeah, I would say probably ten would be  
17 more accurate.

18 Q. You were the faculty leader for eighth  
19 grade FCA at Mount Vernon Middle School?

20 A. Faculty leader I don't think would be a  
21 good description.

22 Q. What was your role, your title?

23 A. It was supervisor, monitor, facilitator  
24 of FCA.

1           Q.    And there were both leadership meetings  
2   and general meetings for FCA, correct?

3           A.    Yes, that's correct.

4           Q.    And you attended both those meetings?

5           A.    You're saying all the time?

6           Q.    Well, there always had to be a monitor at  
7   these meetings.

8           A.    That's correct.

9           Q.    So if you weren't there, I assume someone  
10   filled in for you.

11          A.    That is correct.

12          Q.    Okay. For all those times when you were  
13   at school, you were the student monitor for FCA and  
14   you attended the FCA meetings; is that fair?

15          A.    There were times I stepped out and that  
16   type of thing and somebody else, yeah, even if I'm at  
17   school, I'm stepping out like going to the bathroom  
18   or whatever.

19          Q.    And the leadership meetings were on  
20   Monday and the general meetings were on Tuesday; is  
21   that right?

22          A.    That is correct.

23          Q.    And speakers would come and talk to the  
24   students on the Tuesday general meetings; is that

1 right?

2 A. That would be correct.

3 Q. Did they ever come talk to students  
4 during the leadership meetings?

5 A. Yeah, if the students invited someone in.  
6 Yes. It wasn't common.

7 Q. At one point in time you were given a  
8 handbook about the dos and don'ts for FCA.

9 A. Yes.

10 Q. And do you recall when that was?

11 A. Mr. Short gave it to me, I will say  
12 October 2007.

13 Q. Before you had that FCA handbook, what  
14 sort of instruction or guidance or materials did you  
15 have about what you could or could not do as a  
16 teacher monitor in FCA?

17 A. What kind of --

18 Q. Instruction, training manuals, anything  
19 that told you what --

20 A. Very little.

21 Q. Did you understand -- how long were you  
22 the teacher monitor for FCA and/or Cross Club?

23 A. I will say probably over 17 years.

24 Q. Okay. And you understood for that entire

1 17-year period that faculty involvement in FCA had to  
2 be limited to monitoring, facilitating, and  
3 supervising the meetings, correct?

4 A. Correct.

5 Q. And you understood for all those 17 years  
6 that teachers were prohibited from taking an active  
7 role in the meetings, correct?

8 A. Say that again.

9 Q. You understood for that entire 17-year  
10 period that teachers were prohibited from taking an  
11 active role in the FCA meetings.

12 A. Yeah. It would -- yes. Prohibited from  
13 taking an active role?

14 Q. Yes.

15 A. Yes.

16 Q. And, in fact, it would violate the U.S.  
17 Constitution if you as a teacher monitor took an  
18 active role in the FCA meetings, correct?

19 A. That would be my understanding, yes.

20 Q. Okay. There was a, I'm talking about the  
21 2007-2008 school year, at the beginning of the year  
22 up until January I think students didn't, correct me  
23 if I'm wrong, but students did not need permission  
24 slips to attend FCA meetings; is that right?

1 A. Give me those times again.

2 Q. 2007-2008 school year up through January  
3 2008 students did not need permission slips to attend  
4 FCA meetings; is that right or wrong?

5 A. I would say that's wrong.

6 Q. Do you recall a point in time when it  
7 became mandatory that students have permission slips?

8 A. It became clear to me April, I'll say  
9 April 2<sup>nd</sup>.

10 Q. Of 2008.

11 A. '8, yes.

12 Q. So up till April 2<sup>nd</sup> of 2008 there was  
13 ambiguity about whether students needed a permission  
14 slip or not?

15 A. That would be correct.

16 Q. So I take it, then, you did not enforce a  
17 permission slip policy during that period before  
18 April 2<sup>nd</sup>, 2008.

19 A. There was some confusion, like I said,  
20 there was some confusion there.

21 Q. Right.

22 A. January, February, March.

23 Q. Okay. So January, February, March,  
24 because there was this confusion, you did not require

1 students to have a permission slip to attend FCA.

2 A. We were working on it. We were in a  
3 transitional mode there I guess.

4 Q. Okay. So during that January, February,  
5 March 2008 time period students attended FCA  
6 sometimes without a permission slip, correct?

7 A. Yeah. Yes.

8 Q. And James Doe, in fact, attended FCA  
9 without a permission slip.

10 A. That's correct.

11 Q. Now, did you, when the speakers would  
12 come to talk to FCA, did you give suggestions to the  
13 kids about who the speakers might be?

14 A. Give suggestions to them?

15 Q. In other words, suggest to the students  
16 the names of people they should contact to come  
17 in and speak to FCA.

18 A. Yes. I can say yes.

19 Q. Okay. And over the years you, in fact,  
20 did contact some speakers to come in to have them  
21 come in and speak at FCA meetings, right?

22 A. Contact speakers?

23 Q. Right.

24 A. Yeah. I would see the speakers out in

1 the community and have contact with them, yes.

2 Q. And you would ask them to come speak at  
3 the FCA meeting.

4 A. Yes.

5 Q. Sometimes you would have the students  
6 contact these speakers and have the students request  
7 that the speakers come in and speak at the FCA  
8 meetings?

9 A. Initial contact by students.

10 Q. Okay.

11 A. Yes.

12 Q. Okay. Do you know who Father Mark  
13 Hammond is?

14 A. Yes, I do.

15 Q. Who is he?

16 A. He's the local priest in town.

17 Q. And you contacted Father Hammond at one  
18 point in time to ask him to come speak at an FCA  
19 meeting, right?

20 A. Initial contact? No. But we did have a  
21 discussion on that, yes.

22 Q. Do you remember attending a Care Net  
23 Pregnancy Services dinner in late-spring 2008?

24 A. Yes.



1 Q. And Father Hammond was there?

2 A. Yes, he was.

3 Q. And you asked him if he would come speak  
4 at an FCA meeting at that dinner, correct?

5 A. Yes, I did.

6 Q. Okay. Did you ever lead any kind of  
7 prayer during FCA meetings?

8 A. No.

9 Q. Did you assist students in leading prayer  
10 during FCA meetings?

11 A. No.

12 Q. Were there times when you asked students  
13 to lead a prayer during a meeting?

14 A. My daughter; yes.

15 Q. Were there other students you asked to  
16 lead a prayer during the FCA meetings? I understand  
17 you didn't do it yourself, but just asking the  
18 student "Would you lead a prayer for us today?"

19 A. No.

20 Q. So the only one you remember asking to do  
21 that would be your daughter?

22 A. That would be -- that would be correct.

23 Q. Okay. Did you pray with students during  
24 the FCA meetings?

1           A.     Did I pray there?   Yes.

2           Q.     You prayed with them during the FCA  
3 meetings.

4           A.     What do you mean, with them?

5           Q.     Well, let's take the example where a  
6 student is leading a prayer, and I assume that  
7 everyone in the FCA meeting is praying at that point  
8 in time.

9           A.     Uh-huh.

10          Q.     Is that right?

11          A.     Yes.

12          Q.     Okay.   So you would have prayed along  
13 with those students at that point in time.

14          A.     That would be correct.

15          Q.     Did you ever end a prayer?

16          A.     Yes.

17          Q.     And how would you end a prayer during  
18 those FCA meetings?

19          A.     In the situation you're talking about  
20 would be an amen because that one there had to be  
21 closed off very quickly because students were late to  
22 class for FCA; it would have been a problem.

23          Q.     You've heard testimony in this case as  
24 things have gone along about Pastor Zirkle speaking

1 at an FCA meeting. Do you remember that?

2 A. Yes.

3 If there's a good time, I sure could use  
4 a bathroom break. I know you're in the middle of  
5 something.

6 MR. MANSFIELD: No; we can take a break.  
7 That's fine.

8 THE WITNESS: I don't mean to cut you off  
9 in the middle of a document.

10 (Recess taken, 5:37 to 5:46 p.m.)

11 Q. Did you ever show a movie called  
12 Obsession to students in FCA?

13 A. No, sir.

14 Q. I'm sorry, is that "yes"?

15 A. No.

16 Q. Do you recall having some Ohio State  
17 Buckeye players come to an FCA meeting?

18 A. Repeat that again.

19 Q. Do you recall having some Ohio State  
20 Buckeye players come to an FCA meeting to speak?

21 A. Yes.

22 Q. Do you know who asked those Buckeye  
23 players to come?

24 A. Mr. Keib.

1 Q. Did you introduce those Buckeye players  
2 at that FCA meeting?

3 A. No, I did not.

4 Q. Are you a member of Dave Daubenmire's  
5 Minutemen group?

6 A. No, I'm not.

7 Q. Have you ever participated in events with  
8 Dave Daubenmire's Minutemen group?

9 A. Events?

10 Q. Any kind of event or protest or anything  
11 that the Minutemen have appeared at, have you ever  
12 done that, gone along with Mr. Daubenmire to one of  
13 those events?

14 A. Yes.

15 Q. Now, you showed the movie The Watchmaker  
16 during an FCA meeting; is that right?

17 A. I didn't show it.

18 Q. Was it shown during an FCA meeting?

19 A. Yes.

20 Q. Who showed it?

21 A. That would have been my daughter.

22 Q. And did you ask your daughter -- did you  
23 introduce that movie to your daughter?

24 A. That was e-mailed to me.

1 Q. So it was e-mailed to you and then you  
2 referenced it to your daughter?

3 A. Yes.

4 Q. And then you're telling us it was your  
5 daughter's decision, then, to show that movie during  
6 FCA.

7 A. That would be correct.

8 Q. But the only way your daughter learned  
9 about that movie was by way of you.

10 A. The lady who e-mailed it, she may have  
11 come over and said, "Hey, open it up, I just sent  
12 something to you if you want to look at it," that  
13 type of thing, so maybe she introduced it or I  
14 introduced it.

15 Q. Okay. Was your daughter there when that  
16 lady came over?

17 A. Yes.

18 Q. But the lady sent the e-mail to you,  
19 correct?

20 A. That is correct.

21 Q. Do you recall ever telling the FCA  
22 students that they were the saved ones?

23 A. No.

24 Q. Did you ever talk to any of your eighth

1 grade students, whether in FCA or outside, about  
2 taking a trip to an abortion clinic to protest?

3 A. Can you repeat that?

4 Q. You've had discussions with students over  
5 the years about taking a trip to an abortion clinic  
6 to protest, correct?

7 A. No, sir.

8 Q. Did you ever bring that topic up with  
9 students?

10 A. That topic may have came up in FCA.

11 Q. Did that topic ever come up in class?

12 A. No.

13 Q. Did you ever attend any abortion protests  
14 with any students?

15 A. No.

16 Q. How about with former students?

17 A. I don't recall, sir.

18 Q. So you think you might have?

19 A. I don't know, sir.

20 Q. Do you recall making a statement in class  
21 one time that you had read an article in Time  
22 magazine that stated that scientists found a genetic  
23 link to homosexuality and then you told the students  
24 science was wrong because the Bible states

1       homosexuality is a sin so anyone who is gay chooses  
2       to be gay and is, therefore, a sinner?

3               A.     No, I didn't say that statement.

4               Q.     Do you recall a teacher named Jim  
5       Stockdale?

6               A.     Yes.

7               Q.     He was an intervention specialist in the  
8       school?

9               A.     From what I remember, I think that's what  
10      was his title.

11              Q.     So from time to time he would be working  
12      with a particular student and he would be in your  
13      classroom or other teachers' classrooms?

14              A.     He was working with another teacher, so  
15      no, he didn't come into my classroom. He was working  
16      with another team.

17              Q.     Okay. Do you remember Mr. Stockdale ever  
18      being in your classroom?

19              A.     He may have came in one time. It  
20      was . . .

21              Q.     It was what?

22              A.     Like I said, he may have come in one  
23      time.

24              Q.     Now, you understand that you've filed

1 counterclaims against the Does in this case, correct?

2 A. Yes.

3 Q. And those counterclaims are for  
4 defamation and intentional infliction of emotional  
5 distress. Do you understand that?

6 A. Yes.

7 Q. You claim that the Does have made  
8 numerous factual statements about you.

9 MR. MANSFIELD: Let's mark this.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Freshwater, let me hand you what  
12 we've marked as Exhibit 24. Do you recognize this to  
13 be the counterclaim that your counsel would have  
14 filed on your behalf against the Does?

15 A. This looks like it's it.

16 Q. The back two pages are an affidavit  
17 signed by you? Is that right?

18 A. You going to talk about this?

19 Q. No, I just want to know that's an  
20 affidavit that you signed. Look at the very last  
21 page.

22 A. Yes.

23 Q. That's your signature?

24 A. Yes.



1           Q.    Okay.  And if you look at the very first  
2   page of Exhibit 24, first page of the counterclaim,  
3   in paragraph 1 you say "Plaintiffs have made numerous  
4   factual statements to other persons, some of which  
5   have been filed as factual statements in the instant  
6   First Amendment Complaint."  Do you see that?

7           A.    Yes, I do.

8           Q.    And there were a number of factual  
9   statements that the Does included in their complaint  
10  against you, correct?  That's what that's referring  
11  to.

12          A.    Yes.

13          Q.    And so those are various complaints about  
14  what they're alleging you did or did not do, correct?

15          A.    Yes.

16          Q.    Okay.  Is there any other place that  
17  you're aware of that the Does made factual statements  
18  to other persons about actions and conduct undertaken  
19  by you other than what appears in the amended  
20  complaint?

21          A.    I would have to look at that.

22          Q.    No, you tell me.  Are there any other  
23  statements aside from the ones that are in the  
24  complaint that you're aware of that the Does made to

1 anyone?

2 A. I'm not quite sure how I would know  
3 unless I looked at the complaint.

4 Q. Well, you've got the counterclaim right  
5 in front of you.

6 A. Oh, in here.

7 Okay. The question again, sir?

8 Q. I understand that you consider that the  
9 factual statements that the Does made in their  
10 complaint against you constitute defamation, correct?

11 A. Yes.

12 Q. And that complaint that they filed  
13 against you contains a number of different factual  
14 statements about conduct that you either did or did  
15 not do, correct?

16 A. Yes.

17 Q. You're not aware of any other statements  
18 out there except for those ones in the complaint that  
19 the Does have made against you; is that correct?

20 A. I'm not aware of any others.

21 Q. Okay. Now, you make -- here you talk  
22 about some different factual statements that the Does  
23 have made. Strike that question.

24 How did you find out the Doe family was